

# INDIANA BOARD OF TAX REVIEW

## Small Claims Final Determination Findings and Conclusions

**Petition Nos:** 03-011-12-1-5-10001  
03-011-13-1-5-00001  
03-011-14-1-5-10027-15  
03-011-15-1-5-00132-15<sup>1</sup>  
**Petitioner:** Ellen W. DeDomenic Revocable Living Trust  
**Respondent:** Bartholomew County Assessor  
**Parcel:** 03-94-25-000-001.701-011  
**Assessment Year:** 2012, 2013, 2014, 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

### Summary

1. In these assessment appeals, the parties offered competing appraisals. While all the appraisals are generally probative, we find the appraisals offered by the Respondent for each year more persuasive, and we order the assessments changed to correspond to those values.

### Procedural History

2. The Petitioner filed appeals of its 2012-2015 assessments with the Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA denied all the appeals.
3. The Petitioner then timely filed a Form 131 petition for each year with the Board. It elected our small claims procedures.
4. On December 8, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing on all four petitions. Neither he nor the Board inspected the property.
5. Milo E. Smith, certified tax representative, appeared for the Petitioner. Virginia R. Whipple of GnA Assessment Professionals appeared for the Respondent. The following people were sworn as witnesses: Smith; Belinda A. Graber, certified residential appraiser; Ellen (Jodi) Wright, certified residential appraiser, and Lew Wilson,

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<sup>1</sup> There appears to have been a scrivener’s error in the hearing notice and various filings (other than the Form 131 petition) for this petition. In those notices and filings, the petition number was listed as 03-005-15-1-5-00132-15.

Bartholomew County Assessor.

### Facts

6. The subject property is a single-family home on 4.14 acres of land located at 9806 W. Raintree Drive in Columbus. The PTABOA determined the following assessments for the years under appeal:

Year	Value
2012	\$397,700
2013	\$410,800
2014	\$457,500
2015	\$461,400

7. The Petitioner requested that the assessments be changed to the following values:

Year	Value
2012	\$350,000
2013	\$365,000
2014	\$395,000
2015	\$435,000

8. The official record of the hearing includes the following:
- a. A digital recording of the hearing.
  - b. Exhibits:

#### Petitioner's Exhibits

- Petitioner Exhibit 1: Property record card ("PRC"),
- Petitioner Exhibit 3: Appraisal of the subject property as of March 1, 2012, prepared by Belinda Graber,
- Petitioner Exhibit 4: Graber appraisal for March 1, 2013,
- Petitioner Exhibit 5: Graber appraisal for March 1, 2014,
- Petitioner Exhibit 6: Graber appraisal for March 1, 2015.

#### Respondent's Exhibits

##### 2012 Exhibits

- Respondent Exhibit A: Resumes for Gordon Lewis Wilson and Virginia R. Whipple,
- Respondent Exhibit B: Statement of Professionalism,
- Respondent Exhibit C: 2011 PRC for the subject property,

Respondent Exhibit D: 2012 PRC for the subject property,  
Respondent Exhibit E: Aerial photograph of the subject property,  
Respondent Exhibit F: Certificate of Compliance from Steve Haslam, CEO and  
President of StreetLinks Lender Solutions, and appraisal  
report from Janalyce Nugent appraising the subject  
property as of December 2, 2011,  
Respondent Exhibit G: Curriculum vitae (“CV”) for Jodi Wright,  
Respondent Exhibit H: Photographs of the subject property,  
Respondent Exhibit I: September 21, 2016 email from Milo Smith to the  
Respondent.

2013 Exhibits:

Respondent Exhibit A: Wilson and Whipple resumes  
Respondent Exhibit B: Statement of Professionalism  
Respondent Exhibit C: 2012 PRC for the subject property,  
Respondent Exhibit D: 2013 PRC for the subject property,  
Respondent Exhibit E: Aerial photograph of the subject property,  
Respondent Exhibit F: Appraisal of the subject property performed by Jodi  
Wright for March 1, 2013,  
Respondent Exhibit G: Wright CV,  
Respondent Exhibit H: September 21, 2016 email from Smith to the Respondent,

2014 Exhibits

Respondent Exhibit A: Wilson and Whipple resumes,  
Respondent Exhibit B: Statement of Professionalism,  
Respondent Exhibit C: 2013 PRC for the subject property,  
Respondent Exhibit D: 2014 PRC for the subject property,  
Respondent Exhibit E: Aerial photograph of the subject property,  
Respondent Exhibit F: Wright appraisal for March 1, 2014,  
Respondent Exhibit G: Wright CV  
Respondent Exhibit H: September 21, 2016 email from Smith to the Respondent

2015 Exhibits:

Respondent Exhibit A: Wilson and Whipple resumes,  
Respondent Exhibit B: Statement of Professionalism,  
Respondent Exhibit C: 2014 PRC for the subject property,  
Respondent Exhibit D: 2015 PRC for the subject property,  
Respondent Exhibit E: Aerial photograph of the subject property,  
Respondent Exhibit F: Wright appraisal for March 1, 2015,  
Respondent Exhibit G: Wright CV  
Respondent Exhibit H: September 21, 2016 email from Smith to the Respondent

## **Board Exhibits**

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

## **Objections**

9. Each party objected to portions of the opposing party's evidence. The ALJ took the objections under advisement. We therefore turn to those objections, beginning with the ones made by the Respondent.

### **A. The Respondent's Objections**

10. The Respondent objected to all of the Petitioner's exhibits on the grounds that the Petitioner did not exchange them sufficiently far in advance of the hearing. The requirements for exchanging evidence prior to a small claims hearing are found in 52 IAC 3-1-5, which states:

(d) If requested not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing.

...

(f) Failure to comply with subsection (d) may serve as grounds to exclude evidence or testimony that has not been timely provided.

52 IAC 3-1-5.

11. The hearing for these appeals was originally scheduled for 9:00 a.m. on September 28, 2016, but we continued it until December 8, 2016, at the Petitioner's request. The Respondent testified that he received copies of the Petitioner's exhibits approximately mid-day on September 21, 2016, which was less than five full business days before the original hearing. He therefore argues that we should exclude the exhibits.
12. We disagree. The Respondent had ample time to review the Petitioner's evidence before the actual hearing date. Even if the hearing had been held as originally scheduled, the Respondent did not show how receiving the exhibits when he did would have prejudiced him to the degree that exclusion, rather than a less drastic remedy, was required. We therefore overrule the objection.

## B. The Petitioner's Objections

13. The Petitioner objected to Respondent's Exhibits H (2013-2015) and I (2012)—copies of emails from its representative, Milo Smith, to the Respondent—on grounds that the Respondent did not exchange them before the hearing.
14. We overrule the objection. The emails purport to have been from Smith, and he presumably could address whether the copies were authentic. If he needed more time to review the emails to refresh his memory, he could have asked for a break instead of the more drastic remedy of exclusion. In any case, the Respondent offered the emails to support his objection that the Petitioner did not timely exchange his exhibits. And we have overruled that objection.
15. The Petitioner next purported to object to the Respondent's appraiser, Jodi Wright, testifying about her review of an appraisal of the subject property performed by Janalyce Nugent, as well as to the appraisal itself, which the Respondent offered as Respondent's Exhibit F (2012). The Petitioner objected to Wright's testimony because she did not prepare a written report of her review. It objected to Nugent's appraisal because Nugent was not at the hearing to testify and because the appraisal was prepared solely for use in evaluating mortgage financing.
16. The Petitioner did not make those objections contemporaneously when the evidence was offered.<sup>2</sup> Instead, it later "objected" to Nugent's appraisal and Wright's testimony as a preface to cross-examining Wright and during what its representative, Milo Smith, described as his closing argument on the 2012 appeal. Thus, the objections are more properly characterized as arguments about the probative weight of Wright's testimony and Nugent's appraisal rather than as objections to the admissibility of that evidence.
17. In any case, to the extent the Petitioner objected to Wright's testimony or Nugent's appraisal, we overrule those objections. As to Wright's testimony, the Petitioner argued that because Wright did not prepare a written report, it could not evaluate the merits of Wright's appraisal review before the hearing. The Petitioner, however, did not claim that the Respondent failed to identify Wright as a witness prior to the hearing. If it wanted to know more about what Wright would testify to, it could have opted out of our small-claims rules and conducted discovery. *Compare* 52 IAC 3-1-5(c) (limiting discovery in small claims to names and addresses of witnesses and copies of documentary evidence) *with* 52 IAC 2-8-3 (allowing parties to use discovery methods under the Indiana Rules of Trial Procedure in non-small-claims appeals).
18. As for Nugent's appraisal report, Nugent's absence from the hearing does not, by itself, justify excluding her report from evidence. The hearsay rule generally precludes out-of-

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<sup>2</sup> Indeed, the Petitioner indicated it had no objection to the Respondent's exhibits for 2012, including Nugent's appraisal, when the Respondent offered them.

hearing statements offered to prove the truth of the matter asserted in those statements. *See* Ind. Evidence Rule 801. But the rule is subject to various exceptions, including one for appraisal reports offered in our hearings:

(p) At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

I.C. § 6-1.1-15-4(p).

19. The Petitioner's other ground for objecting to the appraisal—that Nugent prepared it solely for use in evaluating mortgage financing—fares no better. The Petitioner did little to explain how that fact affects the appraisal's probative weight, much less its admissibility. At most, the Petitioner merely speculated that there could have been various reasons why Nugent came to a value conclusion that was close to the property's selling price.

## **Contentions**

### **A. Summary of the Respondent's Case**

20. The Respondent offered appraisals of the subject property for each year under appeal. For the 2012 appeal, the Respondent offered Nugent's appraisal. Nugent valued the property at \$412,000 as of December 2, 2011. She certified that she prepared the appraisal in conformity with USPAP, and she based her valuation opinion on the sales-comparison approach. Although one line in the appraisal report indicates that Nugent did not develop the cost approach "due to the depreciation present," the report elsewhere indicates that she included the cost approach at the lender's request, and the appraisal actually contains a cost-approach analysis estimating the property's value at \$412,300. Nugent did not develop the income approach due to a lack of rental properties in the neighborhood. *Resp't Ex. F (2012)*.
21. Although the home was built in 1950, Nugent estimated its effective age at 15 years. She attributed the substantial difference between its actual and effective ages to "improvements made to both short and long lived items." According to Nugent, the home was "updated extensively in 2009." All the bathrooms were remodeled and the kitchen was updated. The kitchen and master bathroom had granite countertops, and the DeDomenics<sup>3</sup> added a tankless water heater and new rubber roof. The circuit breaker

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<sup>3</sup> Robert and Ellen DeDomenic bought the property in February 2011. They transferred it to the Petitioner, Ellen W. DeDomenic Revocable Living Trust, in May 2012. *See Pet'r Ex. 1*.

box had also been updated. *Resp't Ex. F (2012)*.

22. In her sales-comparison analysis, Nugent used three sales and two listings of comparable properties from Columbus. She adjusted the list prices based on a list-to-sale-price ratio. All the sales and listings involved homes that were between 2 and 36 years old. The properties sold for prices ranging from \$390,000 to \$418,000. Nugent adjusted the sale and listing prices to account for various ways in which the comparable properties differed from the subject property, including difference in site size, living area (including the presence or absence of a basement), and various amenities. Despite the fact that her comparable homes were substantially newer than the subject home, she believed the updates to the subject home lowered its effective age to a point where no adjustments were required. Nugent's gross adjustments for the three properties ranged from 10.5% to 23.1% of sale price, and her net adjustments ranged from -1.4% to 5.6%. *Resp't Ex. F (2012)*.
23. Jodi Wright—a certified residential appraiser with 30 years of experience who holds designations of SRA, G.R.I., and CRS—reviewed Nugent's appraisal. She found that it complied with USPAP. In her opinion, Nugent's comparable properties were competitive with, and comparable to, the subject property. She also testified that the adjustments Nugent made to the sale prices seemed reasonable. Thus, Wright found that Nugent's appraisal was acceptable for determining the property's market value as of the appraisal's effective date. Wright also testified that there were no changes in the market between the appraisal's effective date and March 1, 2012. *Wright testimony*.
24. Wright prepared her own appraisal reports for the 2013-2015 valuation dates. She used exterior measurements to determine that the home has 3,485 square feet (Nugent described the home as having 3,482 square feet in her appraisal). Like Nugent, she described the home as having four bedrooms. While one bedroom was being used as an office, Wright explained that it is technically a bedroom and has access to a bathroom. *Wright testimony; Resp't Ex. F (2013-2015)*.
25. Wright found no issues with the home's utility. A second living quarter was added with a bedroom and bathroom. Although the living quarter may only be accessed through another bedroom, Wright believes it has the same functional utility as a bedroom. She also explained that the front of the home has a screened-in porch. While people normally do not enter a home through a screened-in porch, Wright had no problem walking around to the back of the home. *Wright testimony; Resp't Ex. F (2013-2015)*.
26. Like Nugent, Wright certified that she prepared her appraisals in conformity with USPAP. She relied solely on the sales-comparison approach, explaining that she did not develop the cost and income approaches because of the property's age and the lack of rental data, respectively. Wright used sales of comparable properties from within one year of each valuation date. Because many nearby properties were on the lakefront, she expanded her search beyond the immediate neighborhood. But all her comparable

properties were from the same market segment, and she viewed them as “alternative selections” to the subject property for typical purchasers. In her 2013 appraisal, however, Wright used two lakefront sales. *Wright testimony; Resp’t Ex. F (2013-2013)*.

27. Wright considered adjusting each property’s sale price to account for relevant ways in which it differed from the subject property, including location, site size, living area, age of the home, and the presence or absence of a basement and various amenities. For the two lakefront sales in her 2013 appraisal, Wright adjusted the sale prices downward by \$99,000. For her age adjustments, she focused on the effective ages of the homes rather than their actual ages. As she explained at the hearing, a home’s effective age may differ from its actual age, depending on its condition. Some upgrades, such as window replacements, new paint, and new flooring can make a property appear newer than its actual age and thus make it more attractive to potential purchasers. Based on the improvements made by past and present owners, Wright estimated the home’s effective age at 15-20 years for each valuation date. *Wright testimony, Resp’t Ex. F (2013-2015)*.
28. Wright’s gross adjustments ranged from 13.8% to 35.5% of sale price, and her net adjustments ranged from -22.3% to 13.5%. The range was tighter in some years than in others. After making her adjustments and reconciling the adjusted sale prices, Wright settled on the following values for the subject property:

<b>Year</b>	<b>Value</b>
2013	\$447,500
2014	\$465,500
2015	\$496,500

*Wright testimony; Resp’t Ex F (2013-2015)*.

29. Wright acknowledged that she erred by failing to adjust the sale price for her first comparable property in her 2013 appraisal to account for the fact that it had a basement while the subject property did not. That adjustment would have lowered the adjusted sale price from \$397,700 to \$366,700. She gave that sale the strongest consideration in reaching her valuation opinion, noting that it was for an off-water property and that it had the lowest gross and net adjustments. Nonetheless, she testified that correcting the error would not change her valuation opinion of \$447,500 for the subject property. That amount was still significantly less than the other two adjusted sales prices of \$586,800 and \$506,900. *Wright testimony; Resp’t Ex. F (2013)*.
30. Finally, although the Petitioner offered appraisals from Belinda Graber estimating lower values for each year than the values estimated by Wright and Nugent, the Respondent believes that Graber’s appraisals are misleading in form and content. Graber valued the subject home as having only three bedrooms and 2.5 baths, but it actually has four bedrooms and 3.1 baths. And she made large adjustments to her comparable properties’

sale prices to account for substantial differences in the homes' actual ages, even though the subject home's effective age is much lower than its actual age. *Whipple argument, Wright testimony; Resp't Ex. F (2012-2015).*

## **B. Summary of the Petitioner's Case**

31. The Petitioner relied primarily on Graber's appraisals. Graber is a certified residential appraiser with more than 30 years of experience, and she certified that she prepared her appraisals in conformity with USPAP.
32. According to Graber, the home originally had two bedrooms and was probably used as a weekend home. It has no view of the lake. A previous owner added on a bedroom and bath. Like Wright, Graber noted that additional living quarters were added to the home, which she described as being akin to a caretaker's suite. Unlike Wright, however, Graber did not believe that it had the same utility as a normal bedroom. She therefore characterized the home as a two-bedroom home with an additional walk-through bedroom. *Graber testimony; Pet'r Exs. 3-6.*
33. Graber believes the home lacks appeal because of its orientation on the lot (having to access it by walking around the house). The caretaker's suite is off the side where the home is accessed, which creates functional obsolescence with the second bathroom. When asked how she addressed that obsolescence, Graber explained that it was "more of a feeling" she had about the house and how she treated the homes. She could not quantify the obsolescence "in a way that [she] could make it curable," because she "couldn't estimate how much it would cost to redo the drive or whatever." She did not think that she reduced the value much for it. The issue finally dawned on her "after it was all over and done with" and she was looking at the house, so "it wasn't reflected in the market value," although she thought it was a "marketability issue." *Graber testimony; Pet'r Exs. 3-6.*
34. Like Wright, Graber estimated the property's value as of March 1 of each assessment year. Also like Wright, Graber developed only the sales-comparison approach, and she gave similar reasons as Wright for not developing the cost or income approaches. *Pet'r Exs. 3-6.*
35. Graber described how she looked for comparable sales. Most sales from Harrison Lake were for lakefront properties, which are considerably more expensive than the subject property. According to Graber, lakefront lots may sell for \$250,000 more than properties off the lake. She therefore asked herself what she could buy for \$410,000—the price the DeDomenics paid for the subject property in February 2011. She looked at houses selling for prices between \$340,000 and \$455,000 and determined that the DeDomenics had overpaid. *Graber testimony.*
36. While Graber used lakefront sales from Harrison Lake for her 2015 appraisal, she took

some of her sales for the other years from the Tipton Lakes area, because she believed they were more similar to the subject property. Tipton Lakes homes are newer than the subject home, but Graber testified that they “have a similar feel.” *Pet’r Exs. 3-6; see also, Graber testimony.*

37. In at least some instances, Graber’s sales were from areas that were closer to the subject property than the sales Wright used. For example, Wright used a sale that was 11.52 miles away from the subject property in her 2014 appraisal, and a sale that was 10.99 miles away in her 2015 appraisal. She did not make a location adjustment in either instance. By contrast, all of Graber’s sales were within 3.31 miles of the subject property. *Smith argument; Graber testimony; Pet’r Exs. 3-6.*
38. Graber considered adjusting her comparable properties’ sale prices to account for relevant ways in which they differed from the subject property, including some of the same characteristics for which Nugent and Wright made adjustments in their appraisals. Like Wright, Graber made substantial negative adjustments to the sale prices in the few instances where she used sales of homes on Lake Harrison. Graber testified that she used paired sales to determine an adjustment of \$100,000, which she described as being on the “same wavelength” as the adjustments Wright made. Graber applied different adjustments for properties on a cove or on the point of the lake. She adjusted those sale prices by \$50,000 and \$175,000, respectively. *Graber testimony, Pet’r Exs. 3-6.*
39. Unlike Nugent and Wright, who found that no age adjustments were warranted, Graber adjusted her sale prices by \$250 per year to account for difference between the homes’ actual ages. Graber would rather look at a home’s physical construction date than the more subjective concept of effective age. She explained that one must look to a home’s “structural bones” to determine its age. Unless things like the furnace, electrical system, and roof have been replaced, a home is no younger than its actual age. Also, homes built during the same era tend to have similar construction quality. *Graber testimony, Pet’r Exs. 3-6.*
40. Graber testified that she found no evidence of improvements to the subject home that would justify using an effective age lower than its actual age when considering adjustments to her comparable properties sale prices. The home’s structural bones have not been replaced. And effective age accounts for all forms of depreciation, including the types of obsolescence Graber described in the subject home. The subject home is therefore worth much less than the newer homes Nugent and Wright used in their appraisals. Despite that testimony, Graber estimated the subject home’s effective age at 30 years in the section of her appraisal reports calling for a general description of the property. *Smith argument; Graber testimony; see also Pet’r Exs. 3-6.*
41. Graber explained that she deals with updates to things other than a home’s bone structure through adjustments for condition. In her appraisal reports, she assumed the subject home was “in average condition with updates in the kitchen and baths” within five years

of each appraisal date. She rated all of her comparable homes as being in average or equal condition as the subject home. She therefore did not adjust any of the sale prices based on differences in condition. *Graber testimony; Pet'r Exs. 3-6.*

42. Graber's gross adjustments ranged from 9.1% to 46.4% of the properties' sale prices, and her net adjustments ranged from .5% to 21.9%. The range was tighter in some years than in others. After reconciling her adjusted sale prices she settled on the following values for the subject property:

<b>Year</b>	<b>Value</b>
2012	\$350,000
2013	\$365,000
2014	\$395,000
2015	\$435,000

*Pet'r Exs. 3-6; see also, Graber testimony.*

43. Graber acknowledged making some mistakes in her appraisals for the 2012 and 2013 valuation dates. She conceded that her adjustments for basement and finish were wrong, which she attributed to a computer malfunction. She adjusted \$17/sq. ft. for a basement and \$14/sq. ft. for a walkout, but those figures should be reversed. After making those corrections for 2012, the adjusted sale price for the first comparable in her 2012 appraisal dropped from \$338,321 to \$335,156. The adjusted price for her second comparable dropped by \$376, and the adjusted price for her third comparable increased by \$18,600 to \$383,912. Even with those corrections, Graber believed that the adjusted sale prices were within range of her value conclusion of \$350,000. The same was true for 2013—correcting the errors did not affect her overall value estimate of \$365,000. *Graber testimony; Pet'r Exs. 3-6.*
44. The Petitioner also acknowledged that Graber's appraisal treats the property as having only three bedrooms and 2.5 baths while both Wright and Nugent describe it as having four bedrooms and 3.1 baths.<sup>4</sup> Wright and Nugent might have been treating a study as a bedroom. Graber did not consider that room as having the same utility as a bedroom because it lacks access to a bathroom. *Graber testimony; Pet'r Exs. 3-6.*
45. The Petitioner believes that Graber's appraisals offer more accurate opinions of the property's true tax value than do the appraisals from Wright and Nugent. Not only is Graber's use of actual, rather than effective, age a more appropriate way to compare homes, her sales were closer to the subject property and needed fewer adjustments than did the sales Wright and Nugent used in their appraisals. *Smith argument.*

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<sup>4</sup> Wright's and Nugent's appraisal reports list the home as having 3.1 bathrooms. Wright testified that it has 3.5 bathrooms. *Wright testimony; Resp't Ex. F (2012-2015).*

## **Burden of Proof**

46. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase..." I.C. § 6-1.1-15-17.2(d). Regardless, the burden does not shift if the assessment at issue was based on structural improvements, zoning, or uses that were not considered in the previous year's assessment. I.C. § 6-1.1-15-17.2. If the assessor has the burden and fails to meet it, the assessment reverts to the previous year's level or to another value shown by probative evidence. *See* I.C. § 6-1.1-15-17.2 (b).
47. The parties dispute who had the burden of proof for 2012 (they did not discuss the burden for later years, as that determination hinges on how we decide the appeal for each preceding year). The subject property's assessment increased by more than 5% between 2011 and 2012, jumping from \$339,600 to \$397,700. The Respondent nonetheless argues that the Petitioner should maintain the burden of proof because the assessments were based on the home having only 2,732 square feet, while all the appraisals offered at the hearing show that it has at least 3,482 square feet.
48. We disagree. The question is whether the assessment for 2012 included structural improvements that were not considered in the previous year's assessment. And it appears that both the 2011 and 2012 assessments (as well as the assessments for the other years under appeal) were based on a 2,732 square foot home. *See Resp't Ex. D 2012-2015*). The Respondent therefore had the burden of proof for the 2012 appeal. Assigning the burden for the remaining years necessarily depends on how we decide the appeal for each immediately preceding year.
49. Given that both parties offered USPAP-compliant appraisals, determining who has the burden of proof is largely an academic exercise. The more relevant question is which appraisals we find more persuasive. *See Stinson v. Trimas Fasteners, Inc.* 923 N.E.2d 496, 502 (Ind. Tax Ct. 2010) ("When there are competing opinions as to how a property should be valued, the Indiana Board must determine which opinion is more probative."). We therefore focus the rest of our discussion on that question.

## **Analysis**

50. We find Nugent's and Wright's valuation opinions more persuasive than Graber's

opinions. We reach that conclusion for the following reasons:

- a) In Indiana, real property is assessed based on its “true tax value,” which means, “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also*, I.C. § 6-1.1-31-6(c). Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For each assessment year at issue in these appeals, the relevant valuation date was March 1 of that year. *See* I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c) All of the appraisals offered in these appeals are generally probative of the subject property’s true tax value. They were all performed in accordance with USPAP. And the appraisers relied either exclusively or primarily on a generally accepted appraisal methodology—the sales-comparison approach. Graber valued the property as of the March 1 valuation date for each year. Wright did the same for the three years covered by her appraisals. Nugent, by contrast, valued the property as of December 2, 2011. Nonetheless, that was less than three months before the March 1, 2012 valuation date. Absent any evidence to show significant intervening changes in the market, her appraisal was sufficiently close to the relevant valuation date to carry probative weight.
- d) Both Wright and Graber acknowledged mistakes—Wright in her failure to adjust the sale price for a key comparable sale in her 2013 appraisal, and Graber in her basement-related adjustments for two comparable sales in her 2012 and 2013 appraisals. Both appraisers testified that the mistakes did not ultimately affect their valuation opinions, although Wright’s testimony on that point is less than compelling, given that her error was larger and involved the sale to which she gave the greatest weight in reaching her value conclusion.
- e) The biggest differences between the appraisers, however, may be found in their choices of comparable properties and how they treated the subject home’s age in

determining whether to make any adjustments to the sale prices for homes that were built much later. Nugent and Wright opted to estimate the subject home's effective age in light of significant renovations and updates to characteristics they believed were important to buyers, and to use that effective age as the basis for comparison. Graber, by contrast, made adjustments based solely on differences between the homes' actual ages. According to Graber, the fact that components like the furnace had not been replaced recently meant that the subject home's "structural bones" had not changed. She believed it was better to account for the home's renovations and updates through adjustments for condition.

- f) We are more persuaded by the approach Wright and Nugent applied. First, in the absence of other evidence showing which approach is more generally accepted in the appraisal field, we give some weight to the fact that two of the three appraisers based their comparisons on effective age. Second, Graber's own appraisal reports apparently acknowledge some changes to the home's "structural bones," given that she estimated its effective age at less than half its actual age. Yet she used the actual age for her comparisons. Third, although Graber said she prefers to treat updates and renovations separately as part of determining a home's condition, it is not clear that she did much to account for the subject home's significant updates and renovations. While she recognized that the kitchen and baths had recently been updated, she treated the home as if it was in average condition, and she did not make condition-related adjustments to any of her comparable properties' sale prices.
- g) Finally, we recognize that a home's functional utility may be a factor in estimating its effective age. And the subject home's orientation on the lot likely affected its functional utility. But Graber herself struggled to explain the degree to which that issue affected the property, and she ultimately testified that it was not reflected in her estimate of the property's market value. We therefore give it little weight.
- h) As for the appraisers' choice of comparable sales, the record offers little assistance in judging which sales were better substitutes for the subject property. All of the appraisers largely stayed away from sales on Harrison Lake because they involved lakefront properties, although both Wright and Nugent used some lakefront sales. In the few instances where they did so, they made similar adjustments. Nor do we assign much weight to the fact that Wright used a couple of sales that were more than 10 miles away from the subject property. Wright and Graber both testified about the need to look beyond the subject property's immediate neighborhood, and the Petitioner did not offer any evidence to show that Wright's sales were not from comparable locations. Also, contrary to the Petitioner's claims, we do not see any significant difference in the overall level of adjustments made by the appraisers, particularly their gross adjustments.
- i) But there is another fact in the record that helps us judge credibility. The DeDomenics bought the property for \$410,000 in February 2011. While that was

more than a year before the March 1, 2012 valuation date, it was less than a year before Nugent's appraisal. And there is nothing to suggest that market conditions changed significantly between the sale date and March 1, 2012. To the contrary, Graber used sales from June 2010, August 2011, and September 2011 in her appraisal for 2012. She did not adjust any of those sale prices to reflect time-related differences in market conditions. That indicates her belief that the market was stable between the time the DeDomenics bought the property and the relevant valuation date. Yet the sale price was \$60,000 higher than Graber's valuation opinion, while it was only \$2,000 less than Nugent's opinion.

- j) Although Graber believed that the DeDomenics paid too much for the property, she offered little to support that belief beyond the fact that her sales-comparison analysis pointed to a lower value. We are not persuaded, and we find that the sale price actually helps distinguish between the reliability of Graber's and Nugent's valuation opinions for 2012. While Wright's opinions for later years were between \$47,500 and \$86,500 higher than Nugent's opinion for 2012, Graber's valuation opinions increased significantly during that period as well.

### **Conclusion**

- 51. While the valuation opinions from each appraiser are generally probative, we are more persuaded by the opinions from Nugent and Wright. We therefore find that the assessments should be changed to the following amounts, which match the values from Nugent's appraisal for 2012 and from Wright's appraisals from the remaining years:

<b>Year</b>	<b>Assessment</b>
2012	\$412,000
2013	\$447,500
2014	\$465,500
2015	\$496,500

Issued: April 3, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**-APPEAL RIGHTS-**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.